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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/177,080    10/23/98    SCHUTZ    A    P63073USO

PM82/0113  
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EXAMINER

LITTLE, W

ART UNIT

PAPER NUMBER

3643

DATE MAILED:

7  
01/13/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/177,080

Applicant(s)

SCHULTZ, ET AL

Examiner

LITTLE

Group Art Unit

3643

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE (3) MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

## Status

- ☒ Responsive to communication(s) filed on 10/23/98
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- ☒ Claim(s) 1-23 is/are pending in the application.
- Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- ☒ Claim(s) 1-3 AND 15-23 is/are allowed.
- ☒ Claim(s) 4-6, 8, AND 10-14 is/are rejected.
- ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- ☐ Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
  - ☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been received.
  - ☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.
  - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

## Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) (2 SHEET)
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other \_\_\_\_\_

Office Action Summary

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Claim allowed.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 4 and 10-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Schulte.

The limitations of these claims broadly read on the process for manufacturing a food product taught by Schulte comprising, *inter alia*, the steps of continuously creating a series of aligned food-receiving cavities (13) around an elongated discharge tube (10).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-6, 8 and 10-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vanhatalo, et al (cited by Applicants) in view of Garwood. Garwood discloses that it is old and well-known in the art to form aligned cavities in the opposite sheets of deformable material, prior filling said cavities with a food product. It would have been obvious, in view of this teaching of Garwood, to ~~pre~~-form cavities in the sheets of materials (12) and (13) of Vanhatalo, et al. prior to the filling thereof by tubes (1). One of ordinary skill would have motivated by the design

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preference in effecting this modification, since such merely involves a change in the sequence when the cavities are formed.

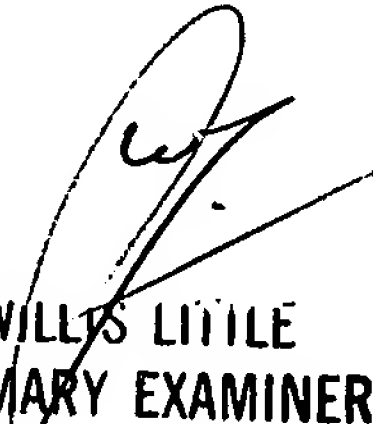
Claims 7-9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following references of interest are cited:

Mahaffy, et al. Rathemacher, Aguzzoli each showing an analogous packaging system for a food product.

Little-Carmen

January 7, 2000

  
WILLIS LITTLE  
PRIMARY EXAMINER  
ART UNIT